IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

First AppealNo.379/2006

Asha W/o Pravin Mangalkar,
Aged about 30 years,
R/o c/o Rajendra Wamanrao Guhe,
Dhane Nagar,
Yashoda Nagar, Amravati,
Tah. & District Amravati. **APPELLANT**

VERSUS

Pravin S/o Vijayrao Mangalkar,
Aged about 36 years, Occ. Service,
R/o Siddheshwar Nagar, Waghapur Road,
Chausala Road, Yeotmal,
Tah. & Dist. Yeotmal.

RESPONDENT

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Mr. G.K. Mundhada, Advocate for the Appellant.
Mr. S.V. Deshmukh, Advocate for the Respondent.

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CORAM : A.P. LAVANDE, J.
DATED : 26/09/2006

ORAL JUDGMENT :

1 Heard learned counsel for the parties. Admit. Mr. Deshmukh, learned counsel waives notice on behalf of the respondent. Heard by consent of the parties.

2 By this appeal, the appellant who is the Petitioner in Hindu Marriage Petition No.101/2004 before Joint Civil Judge, Senior Division, Amravati challenges order dated 27.4.2006 by which the petition filed by the appellant-petitioner has been dismissed.

3. The petitioner filed the above petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights against respondent. At some stage, learned trial Court directed the petitioner to remain present, however, the petitioner did not remain present. The respondent filed an application for dismissal of the petition. On 27.4.2006 the trial Court passed the order of dismissal of the petition. The same was passed on two grounds. Firstly, on the ground that the petitioner had not remained present as directed by the Court and secondly, on the ground that from the medical reports produced on record there was reason to believe that the petitioner was suffering from some

ailment and as such the petitioner had not come to the Court with clean hands.

4 Mr. Mundhada, learned counsel appearing for the appellant submitted that the impugned order passed by the trial Court is illegal and harsh and in any event, the trial Court could not given finding on merits without permitting the parties to lead evidence in the matter. Learned counsel further submitted that the appellant shall cooperate with the Court for early disposal of Hindu Marriage Petition and will not seek unnecessary adjournment in the matter.

5 Per contra, Mr. Deshmukh, learned counsel appearing for the respondent submitted that there is no merit in the appeal and therefore, no interference is called for in the present appeal.

6. Having considered the submissions made by learned counsel for the parties and having perused the records and the impugned order, I find that the impugned order by which the trial Court dismissed the petition deserves to be quashed and set aside. The trial Court could not even given finding against petitioner on the basis of medical reports without permitting the

parties to lead evidence in the matter. Insofar as direction to the petitioner to remain present is concerned, in view of the statement made by learned counsel for the appellant, I am inclined to give an opportunity to the appellant to lead evidence in the matter.

7 In the result, therefore, impugned order dated 27.4.2006 is set aside. The matter is remanded back to the trial Court for disposal according to law. The parties shall appear before the trial Court on 17th October, 2006 at 11.00 a.m. Learned Advocates for the parties assure this Court that both parties shall cooperative in early disposal of Hindu Marriage Petition filed by the appellant. Having regard to the nature of relief claimed by the petitioner, the trial Court to dispose of the petition expeditiously and in any case on or before 30th June, 2007.

The appeal stands disposed of in the aforesaid terms with no order as to costs.

JUDGE